

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

NICHOLAS K. HAYES-KELLY,

Plaintiff,

v.

CLINTON J. CURRY, et al.,

Defendants.

No. 2:23-cv-00585-DAD-EFB (PC)

ORDER

Plaintiff is a county jail inmate proceeding without counsel in an action brought under 42 U.S.C. § 1983. In addition to filing a complaint, plaintiff has filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

Leave to Proceed In Forma Pauperis

Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

Screening Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion

1 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which  
2 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such  
3 relief.” *Id.* § 1915A(b).

4 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)  
5 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and  
6 plain statement of the claim showing that the pleader is entitled to relief, in order to give the  
7 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*  
8 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).  
9 While the complaint must comply with the “short and plain statement” requirements of Rule 8,  
10 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556  
11 U.S. 662, 679 (2009).

12 To avoid dismissal for failure to state a claim a complaint must contain more than “naked  
13 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of  
14 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of  
15 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at  
16 678.

17 Furthermore, a claim upon which the court can grant relief must have facial plausibility.  
18 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual  
19 content that allows the court to draw the reasonable inference that the defendant is liable for the  
20 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a  
21 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*  
22 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the  
23 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

#### 24 Screening Order

25 The complaint alleges that on August 18, 2019, Yuba County Sheriff Deputy Tyler  
26 Johannes arrested plaintiff “for a weapon [he] did not have and a crime [he] did not commit  
27 despite proof of innocence.” ECF No. 1 at 3. It further alleges that Ashley Tuft, of the Yuba  
28 County District Attorney’s Office, held plaintiff in jail until November 17, 2019. *Id.* Plaintiff

1 seeks \$150,000 in compensatory damages for emotional distress caused by this “false  
2 imprisonment.” *Id.* In addition to naming deputy Johannes and the District Attorney’s Office,  
3 plaintiff also names the County of Yuba as a defendant. *Id.* at 1. As discussed below, there are  
4 three problems with this complaint requiring that it be dismissed.

5 First, the underlying claim of false arrest/false imprisonment is *Heck*-barred.<sup>1</sup> *Heck* holds  
6 that if success in a section 1983 action would implicitly question the validity of confinement or its  
7 duration, the plaintiff must first show that the underlying conviction was reversed on direct  
8 appeal, expunged by executive order, declared invalid by a state tribunal, or questioned by the  
9 grant of a writ of habeas corpus. *Muhammad v. Close*, 540 U.S. 749, 751 (2004); *Heck v.*  
10 *Humphrey*, 512 U.S. 477, (1994). In any amended complaint, plaintiff should allege why he was  
11 released from jail on November 17, 2019, and whether the weapon charge against him was  
12 dropped.

13 Second, Yuba County can only be liable if plaintiff’s purported injuries were caused by an  
14 officer acting pursuant to a County policy or custom. *See Mt. Healthy City Sch. Dist. Bd. of Ed.*  
15 *v. Doyle*, 429 U.S. 274, 280 (1977); *Monell v. New York City Dep’t of Soc. Servs.*, 436 U.S. 658,  
16 691 (1978); *Villegas v. Gilroy Garlic Festival Ass’n*, 541 F.3d 950, 964 (9th Cir. 2008). Plaintiff  
17 does not allege the existence of any County policy, nor does he allege that his false arrest/false  
18 imprisonment was caused by defendant Johannes’s implementation or adherence to any County  
19 policy.

20 Third, prosecutors are absolutely immune from civil suits for damages under § 1983  
21 which challenge activities related to the initiation and presentation of criminal prosecutions.  
22 *Imbler v. Pachtman*, 424 U.S. 409, 427-28 (1976). This extends to prosecutorial conduct during  
23 pretrial proceedings. *See Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993) (“We have not  
24 retreated, however, from the principle that acts undertaken by a prosecutor in preparing for the  
25 initiation of judicial proceedings or for trial, and which occur in the course of his role as an  
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27 <sup>1</sup> The court notes that “[a] claim for unlawful arrest is cognizable under § 1983 as a  
28 violation of the Fourth Amendment, provided the arrest was without probable cause or other  
justification.” *Dubner v. City & Cty. of San Francisco*, 266 F.3d 959, 964 (9th Cir. 2001).

1 advocate for the State, are entitled to the protections of absolute immunity.”). Thus, plaintiff’s  
2 claims for damages against Tuft and the District Attorney’s Office are not cognizable.

3 If plaintiff wishes to proceed with his claim against defendant Johannes or Yuba County,  
4 he may attempt to correct the deficiencies in those claims by filing an amended complaint.

5 Leave to Amend

6 Plaintiff is cautioned that any amended complaint must identify as a defendant only  
7 persons who personally participated in a substantial way in depriving him of his constitutional  
8 rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the  
9 deprivation of a constitutional right if he does an act, participates in another’s act or omits to  
10 perform an act he is legally required to do that causes the alleged deprivation). Plaintiff may also  
11 include any allegations based on state law that are so closely related to his federal allegations that  
12 “they form the same case or controversy.” *See* 28 U.S.C. § 1367(a).

13 The amended complaint must also contain a caption including the names of all defendants.  
14 Fed. R. Civ. P. 10(a).

15 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See*  
16 *George v. Smith*, 507 F.3d 605 at 607.

17 Any amended complaint must be written or typed so that it so that it is complete in itself  
18 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended  
19 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
20 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114  
21 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter  
22 being treated thereafter as non-existent.”) (*quoting Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.  
23 1967)).

24 Conclusion


25 Accordingly, it is ORDERED that:

- 26 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 7) is GRANTED;  
27 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected  
28 in accordance with the notice to the Sacramento County Sheriff filed concurrently herewith;

1           3.       Plaintiff's complaint (ECF No. 1) is DISMISSED with leave to amend within 30  
2 days of service of this order; AND

3           4.       Failure to comply with this order may result in dismissal of this action.

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5 DATED: June 9, 2023.

  
6 EDMUND F. BRENNAN  
7 UNITED STATES MAGISTRATE JUDGE  
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